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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1444

JOHN YOUNG,

Petitioner,

—v.—

STATE OF NEW JERSEY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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Petitioner John Young prays the Supreme Court to grant a writ of certiorari to review the judgment of the Supreme Court of New Jersey affirming his conviction of entry into an educational institution with the intent to disrupt classes and interfere with the peace and good order of the place.

Opinion Below

The opinion of the Supreme Court of New Jersey (App. A., *infra*) is reported at 57 N.J. 240 (1970).

Jurisdiction

The decision of the Supreme Court of New Jersey was filed on December 7, 1970. The jurisdiction of the Court is conferred by 28 U.S.C. §1257(3).

Questions Presented

1. Whether N.J.S. 2A:149A-2, which prohibits any person other than a bona fide student, parent or legal guardian of such student, teacher, administrator or school employee from entering a school building with the intent of disrupting classes or interfering with the peace and good order of the school, is contrary to the Equal Protection Clause of Constitution due to the absence of any compelling State interest supporting these classifications.

2. Whether N.J.S. 2A:149A-2 is contrary to the Equal Protection Clause due to the absence of any rational basis for the classifications made.

3. Whether punishing defendant for his intent alone when the intent is accompanied only by an innocent and ordinary act, entry into a school building, infringes upon freedom of thought and movement guaranteed by the Constitution.

4. Whether N.J.S. 2A:149A-2, turning on the intent of an individual upon entering a school, a facility often used as a forum for public discussion, results in a chilling effect upon the exercise of First Amendment rights.

5. Whether conviction of the defendant under N.J.S. 2A:149A-2 after he had been officially ushered into the school and asked by school officials to remain during a meeting to air student grievances is contrary to the Due Process Clause of the Constitution.

Constitutional Provisions and Statutes

N.J.S. 2A:149A-2 under which the defendant was convicted provides:

> "Any person, other than a bona fide student therein or parent or legal guardian of such student or a teacher, administrator, or other school employee while in the performance of his duties, who enters any building, structure or place used for any educational purpose with the intent of disrupting classes or of otherwise interfering with the peace and good order of the place shall be guilty of a misdemeanor."

The First Amendment to the United States Constitution provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Section One of the Fourteenth Amendment to the United States Constitution states:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statement of the Case

1. *The Proceedings*

After a six-day trial in the Superior Court Law Division for Mercer County, the jury returned a verdict of guilty on an indictment charging John Young, a lay minister with the Unitarian-Universalist Association, with an unlawful entry into Trenton Central High School on March 12, 1969 (Tr. 244). The indictment was based on N.J.S. 2A:149A-2. John Young received a fine of $500. A timely appeal to the Superior Court, Appellate Division was taken by counsel on the appeal and the Attorney General was given notice of the appeal challenging the constitutionality of the statute. On the appeal the questions presented here were raised in briefs filed with the Appellate Division. The Supreme Court of New Jersey on its own motion certified the appeal. After oral argument was held on September 14, 1969, the Supreme Court requested that supplemental briefs be filed on the third question here presented, the coupling of an unlawful intent with an innocent act. The Court requested that the briefs be responsive to the conflict between the federal and state courts as developed in *State* v. *Zito,* 54 N.J. 206, 254 A.2d 769 (1969) and *Karp* v. *Collins,* 310 Fed. Supp. 627 (1970) (petition for certiorari now pending). After reviewing the briefs submitted, the Supreme Court of New Jersey in an opinion written by Chief Justice Weintraub upheld the conviction of John Young and restated its position with regard to the continuing federal-state conflict.

2. *The Facts*

Defendant John Young at the time of the incident at Trenton Central High School was a lay minister with the Unitarian-Universalist Association serving as Director of the House of Soul in Trenton (Tr. 12-15 to 17, Tr. 245-4). It was stipulated at the trial that John Young did not come within the exceptions to the statute (Tr. 163).

The House of Soul provided recreational and educational programs for the young and old and served as a meeting place for various community groups (Tr. 245-246). As Director, John Young advised many students as to their personal and school problems (Tr. 189-11 to 15; 189-24 to 25; 210-23 to 211-5, 214-18 to 20). Able to establish rapport with many of them he became, as he said, "a surrogate father" (Tr. 278-11 to 14).

The defendant was approached by a student suspended from Trenton Central for refusing to salute the flag (Tr. 246 to 247). He obtained a legal opinion as to the constitutionality of this dismissal and then published a letter addressed to the school administration in the local newspapers (Tr. 247; Tr. 310; S-9 in evid.). The day before his entry into Trenton Central, John Young participated in a picket line outside the high school; he had organized the picketing on behalf of the suspended student (Tr. 181-5 to 7; Tr. 247-20 to 21). Late that same evening, the defendant received a call at the House of Soul from Dr. Watson, the Superintendent of Schools, informing him that the student's problem had been resolved (Tr. 13 to 16). The two men agreed to meet at Dr. Watson's offices at 9 Stockton Street at 8:30 a.m. the next morning to discuss other important problems at the school (Tr. 13-16, 251).

Without the defendant's knowledge several students had planned a sit-in at Trenton Central for that morning (Tr. 185-20 to 21, 180-3 to 4, 198-1 to 6, 200-3 to 8). Upon being informed of the planned sit-in by his secretary, Mr. Young had asked her to cancel the meeting with Dr. Watson at 9 Stockton and inform him that they could meet at the high school (Tr. 17-6 to 11, 252-12 to 15). As John Young stated:

> "I felt if I could go into that school I could set up a meeting with the students and Dr. Daniels [the principal] and that might forestall that demonstration, whichever it was, that was going to occur that day. We could do that through a form of meeting rather than having a demonstration" (Tr. 305-10 to 15). See also Tr. 278-15 to 279-3.

After receiving Young's call, Dr. Watson called the principal at Trenton Central and told him to meet with the defendant in his office (Tr. 18-18 to 22; 41-24 to 25). John Young arrived shortly thereafter.

When he arrived at the high school, John Young went to the Community Relations Department near the main entrance and met Detective Sapp, a member of the Community Relations unit permanently attached to the high school; Detective Sapp then escorted him to the principal's outer office (Tr. 41-9 to 12, 53-17 to 19, 218-10 to 16, 254-15 to 16). This was standard operating procedure at the school; anyone entering the school would be directed to the main office by a member of that unit or the security guards (Tr. 84, 106-1 to 8).

Defendant organized a conference with concerned students in the principal's office, but the meeting broke up when

the students, feeling they were not being heard, filed out into the corridor and proceeded to sit-in (Tr. 172 to 173, 44, 56-1 to 12, 224, 258, 259). Young who had sat and listened during the conference followed the students into the corridor (Tr. 173 to 174).

While in the hallway, the defendant did not sit, distribute any handbills, or carry any placards or signs (Tr. 225-8 to 9, Tr. 44, 45, 54-24 to 25, 61-23, 117-25 to 118-1). While there he was asked by the principal to leave, but was also told that the Superintendent was coming to see him (Tr. 45-17 to 18, 48-15 to 19, 263, 299-19 to 22). Daniels showed Reverend Young a copy of the statute under which he was subsequently indicted (Tr. 46). Young responded, "Dr. Daniels, don't show me just one law, show me all the laws that pertain to me" (Tr. 46-6 to 7). Officer Quintillious Smith, attached to the Community Relations Department, testified that Young became "loud and boisterous" at this point (Tr. 70-17 to 20).

Subsequently Dr. Watson arrived and sought Young's cooperation (Tr. 19, 30). The superintendent arranged for the students to meet in the cafeteria (Tr. 59), and Young followed the group including some 100 students down to the cafeteria (Tr. 32, 33; 46-16 to 21).

The meeting in the cafeteria was run by the students, and not by John Young. The group at that time had grown to some 300 in number (Tr. 72-24, 118-8). When asked for cooperation by Dr. Watson, Young responded that he was not leading the group (Tr. 33). Watson was not opposed to Young's speaking to the students (Tr. 34). He did speak telling them to keep order (Tr. 178-8, 204) and to keep off the tables (Tr. 277). He counselled the students, as one wit-

ness for the State put it, "to have an orderly meeting so that the grievances of the students could be presented . . ." (Tr. 112-5 to 6). See Tr. 113-18 to 23. John Young testified:

> "So I went to the microphone and I requested that anyone that was there who did not have any legitimate grievance or was there to create a problem that I requested that they leave, because I felt there were some students there that had some legitimate gripes and if that kind of behavior, of any kind of disruptive behavior was exhibited it would work to the detriment of the grievances of the students they had there, so if they could not help them I would prefer them to leave" (Tr. 276-2 to 10).

While in the cafeteria Young was asked to leave by Officer Smith (Tr. 71-22 to 72-8). The Officer testified that Young informed him that he was afraid of "no damn cops" (Tr. 72-7 to 8). Dr. Watson, who solicited Young's cooperation, also asked him to leave on three occasions when he decided that Young was not helping the situation (Tr. 26-8 to 16). Young did leave when requested to do so by Paul McLemmore, an investigator with the State Police, who told him that they were talking about arresting him if he did not leave (Tr. 277-23 to 25). Some of the students left with him at their own instance after realizing that the gates had been closed across the corridors blocking their return to class (Tr. 188-1 to 3, 192).

As a result of the cafeteria meeting the first lunch hour was delayed for some 45 minutes. Classes were extended during that period (Tr. 24-19 to 25; 25-13 to 15; 119-1 to 3, 206).

REASONS FOR GRANTING THE WRIT

1. In response to the claim that no compelling state interest had been shown to support the classifications in N.J.S. 2A:149A-2, the New Jersey Supreme Court summarily held that "the statute before us does not deny to some a common right belonging to all". 57 N.J. at 252. The court then made the very limited statement that there was "no right to enter a school building with the hostile intent the statute forbids". (*Id.*)

The actual purport of that statement is difficult to grasp. The court did not say there is no right to enter generally, but only that there was no right when entry was coupled with the unlawful intent.

Clearly, the statute does give students, parents, teachers, administrators and employees the right to enter with the hostile intent. Only problems of proof, of evidence, become controlling as to the rights of others:

> "The statute being addressed to an act of entry accompanied by the forbidden intent, the Legislature could reasonably decide to exclude from its scope those individuals whose connection with the educational process would readily account for their entry into the school building. A justification for the exception is not hard to find. Since the excepted individuals have an evident reason to enter the school building, it might be difficult to prove that they came there with the forbidden intent" (57 N.J. at 249).

Admittedly, the New Jersey Supreme Court employed this justification while considering the traditional equal protec-

tion test looking to "some" or "any" rational justification, but, as its subsequent discussion of the compelling state interest test shows, it would appear to have premised its conclusions as to "fundamental rights" on its earlier observations with regard to the problems of proof. Problems of proof and problems of fundamental rights are inextricably intertwined in the first and third questions here presented. The premise of the Supreme Court of New Jersey seems to be that, if we can by any stretch of imagination (and beyond a reasonable doubt) show that an individual had the proscribed intent, then his right is somehow removed, and no showing of compelling state interest need be made. The cart is being placed before the horse. Evidential considerations cannot determine the rights of a class or group.

Even the evidential proofs which the court relies upon present a problem here. John Young went to the high school after his secretary called the Superintendent and switched their meeting to the school (T. 17-6 to 11; 252-12 to 15). He was escorted into the school by a school guard and taken directly to the principal's office (Tr. 41-9 to 12, 53-17 to 19, 218-10 to 16). The school superintendent had called the high school to tell the principal to meet with him and to tell John Young that he would be coming there (Tr. 18-18 to 22, 41-24 to 25). As an invitee who entered to discuss matters of specific concern to the superintendent, John Young clearly had, as the Supreme Court suggests in its test, "an evident reason for entering the school building" (57 N.J. at 249). Problems of proof are here so clearly dependent on the circumstantial that they should not affect the exercise of basic rights.

The compelling state interest test has only been applied to date in cases involving the right to vote and the right to travel. See *Kramer* v. *Union Free School District No. 15,* 395 U.S. 621 (1969); *Evans* v. *Cornman,* 398 U.S. 419 (1970); *Shapiro* v. *Thompson,* 394 U.S. 618 (1969). The New Jersey Supreme Court recognized that the parameters of the "compelling state interest" test have not yet been adequately defined. 57 N.J. at 251. Still, the presence of fundamental rights here is evident from a reading of both *Shapiro* and *Kramer. Kramer's* subject-matter is the same as we have here: the interest of a citizen in the operation of a school system and the way in which he can express that interest. Closing the doors of the schoolhouse for some is the same as placing a lock on the voting booth.

In *Shapiro* the court also recognized how fundamental was the operation of the school system to the citizen. It was placed on a par with other basic services:

> "Appellants' reasoning would logically permit the State to bar new residents from schools, parks, and libraries or deprive them of police and fire protection" (22 L. ed. 2d at 614).

Schools are public places; they are used by the public at large to exercise many of the basic rights embodied in the First Amendment to the Constitution.[1] See *Shuttlesworth* v. *City of Birmingham,* 384 U.S. 147 (1969); *Shelton* v. *Tucker,* 364 U.S. 479, 487, 81 S. Ct. 247, 5 L. ed.2d 231, 236 (1960). School buildings both during and after school hours

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[1] Schools are commonly selected as polling places. N.J.S.A. 8:5-22; N.J.S.A. 19:8-3. They can also be used as a place of assembly, for public library purposes and to hold political meetings. N.J.S.A. 18A:20-34.

clearly serve as the forum for the exercise of a whole bundle of fundamental rights.[2]

Just as clear are the discriminatory classifications in N.J.S. 2A:149A-2. The Supreme Court in *Kramer* noted that the stated classifications included in the voting statute there involved would exclude the following groups from the franchise unless they were parents or guardians of enrolled students:

1. senior citizens and others living with children or relatives
2. clergy,[3] military personnel and others who live on tax-exempt property
3. boarders and lodgers
4. parents who neither own nor lease qualified property and whose children are too young to attend school
5. parents who neither own nor lease qualifying property and whose children attend private schools. (See 23 L. ed.2d at 591.)

All of these would also be excluded in the present case. And more. To the enumerated list can be quickly added the parent or guardian of a student attending another

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[2] The Supreme Court of New Jersey sought to separate school activities from other public activities taking place in the schools. It cited a statute which permits non-school uses at the primary and secondary level of public schools only when the building is not in use for school purposes. N.J.S.A. 18A:20-34. Since N.J.S. 2A:149A-2 on its face applies to private and public schools at all levels, the purported separation of these activities does not apply in many instances.

[3] The interests of the clergy would, of course, parallel that of John Young in this case.

school in the system; an employee not ente
the scope of his duties, the spouse of any stud
guardian, administrator or other school empl
pendent contractors and their employees; invite
invited speakers and entertainers, and adm
teachers and employees from other school b
tending interscholastic events. Also excluded a
of the Board of Education and its counsel. Th
tions clearly are not tailored to achieve any
state goal, much less that put forth by the Su
of New Jersey.

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2. Applying the traditional test for the de
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It also stated:

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> "Further, it being to the benefit of the educ
> ess that they come to the school in pur
> interests, they should not be dissuaded
> that later events may suggest they ca
> hostile end. In addition, the Legislature
> those individuals are not the probable s
> evil with which it was concerned" (57 N.J. J. at 249-250).

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Here, of course, the groups permitted to enter a school without fear of the interpretation that may be placed on their words and actions are those who frequent the school as an incident of their occupation as student, teacher, or employee and those who happen to be parents or guardians of attending students. Inclusion of the latter group shows that the Legislature could not have intended to restrict the

exceptions to those who enter on a regular basis. Many of the groups in the enumerated list previously referred to share all of the concerns of this latter group. If the aim of the state is to avoid disruption in the schools, there is simply no connecting link between the potential for disruption and those not included in the list of exceptions. The inference which the statute creates, that those not within the listed exceptions have a greater potential for disruption than those within, is patently arbitrary and capricious without any conceivable basis in fact.

3. The Supreme Court of New Jersey after a lengthy review of the federal-state conflict in *State* v. *Zito,* 54 N.J. 206 (1969) and *Karp* v. *Collins,* 310 F. Supp. 627 (D. N.J. 1970) concludes that N.J.S. 2A:194A-2 "could not be called 'vague' even under the conception of vagueness embraced by *Karp*" (57 N.J. at 264). In *Karp* a three-judge district court held that N.J.S. 2A:170-1, making it an offense for any person when apprehended not to be able to give a good account of himself, was void for vagueness. The crime there is one of presence, presence anywhere in the State. The three-judge court found that another element of the offense was a showing that the accused went to the place (where apprehended) "for the purpose of executing a criminal intent already formed" (310 F. Supp., at p. 631). Central to the concern of the court was its feeling that "presence at a place" was, by itself, clearly ambiguous. No inference could be drawn from presence alone. The court also considered movement to a "place" in furtherance of the illegal purpose as an additional element of the crime, and decided that this, too, did not remove the inherent ambiguity in the statute. "Place" was not sufficiently circumscribed; it could embrace the whole of the State. Purpose plus presence were insufficient by themselves.

In the present case, John Young was ushered into the school by a police officer. He was to meet there with an official of the school. His presence at the place did not remove the ambiguity of his presence. His actions did not give sufficient content to his intent. Unlike the situation usually arising under N.J.S. 2A:170-1 and that in *Zito* he was not arrested *at* the place, the school. And this, itself, is suggestive as to the ambiguity of his acts and for that matter, the ambiguity of any act under this statute. Entry into a school, by itself, contains an inherent ambiguity as to the individual's purpose. In permitting and suggesting the inference which this statute contains, that the individual entered to disrupt, the statute places an unconstitutional restriction on the individual's freedom of movement and his freedom of expression and thought. With the high degree of ambiguity involved, the State runs the risk of convicting many innocent well-meaning citizens. Since the statutory circumstance of entry cannot resolve the ambiguity, the statute must be declared unconstitutional.

If this statute be found valid, then similar statutes directed to an individual's walking on the public sidewalk or even sitting on a park bench would be equally valid. To condemn these acts and to permit these highly ambiguous circumstances to support a conviction is to place severe restrictions on the freedom of the individual and place every citizen in jeopardy.

The Supreme Court claims to have "confidence that the judicial process will be equal to its fact-finding responsibility" (57 N.J. at 264). Intent, it is claimed, can be adequately proven. But, the Supreme Court is not at all sure that intent can be proved when it deals with the problem of classification. Problems of proof, evidential considera-

tions, are said to place parents, students and teachers outside the statutory pale and to justify the statutory classification. Based on an *a priori* evaluation of problems of proof, a statutory presumption is created and replaces proof as to the intent of others in entering an educational institution. Herein resides a basic conflict. If problems of proof of intent are surmountable in one instance, then they should be surmountable in all instances. If there are no problems of proof, then the classification, by the Supreme Court's own terms, cannot be supported.

4. The Supreme Court of New Jersey in response to the claim of statutory overbreadth and a resulting chilling effect on the exercise of First Amendment rights held that "the statute is not addressed to the exercise of speech," and that First Amendment rights are not involved. 57 N.J. at 253-54. This conclusion overlooks completely the fact that educational institutions often serve as the forum for public discussions and debate, and that outsiders often attend their assemblies, both as invited guests and interested members of the audience. The focus of the Supreme Court's opinion was on the primary and secondary levels of public education. On the college level and in private schools where classes are held both at night and during the day, it is clear that school buildings often serve a dual function, as classroom and as meeting place for the public generally. The effect on First Amendment rights cannot be considered incidental. What better place than the schoolhouse exists for the free exchange of ideas intended to excite, intended to provoke and intended to anger the students and others as a stimulus to education. What is significant here, from a constitutional viewpoint, is the chilling effect which this statute, due to its overbreadth, would

have on First Amendment rights. See *Dombrowski* v. *Pfister,* 380 U.S. 479 (1965). Educational institutions fearing the interpretation that this statute creates would hesitate to invite any speaker with a viewpoint to address the students or to permit any public forums to be held on the school premises.

5. Petitioner also claims that his conduct only involved permitted activity and that to arrest him for engaging in such activity constitutes entrapment contrary to the Due Process Clause of the Constitution. *Cox* v. *Louisiana,* 379 U.S. 559 (1965). The Supreme Court of New Jersey found no factual basis for this claim.

In *Cox,* this Court found that the defendant had been given official permission to demonstrate across the street from the courthouse and that the permission granted could not lead to subsequent conviction for acts within the scope of that permission. Likewise there is no question that John Young was permitted to enter the school. Dr. Watson, as superintendent, had told the principal, Roland Daniels, to bring him into his office (Tr. 18-18 to 22). Detective Sapp, a police officer assigned to the school, escorted him from the main entrance to the principal's outer office (Tr. 41-9 to 12, 53-17 to 19, 128-10 to 16). Daniels gave his permission for a meeting with Young and the students in his office (Tr. 92, 255-7 to 8). Later, in the corridor, Daniels after showing him a copy of the new law still reminded him that Dr. Watson was coming over to the high school to meet with him (Tr. 45-17 to 18; 48-15 to 19; 46, 263, 299-19 to 22). When Dr. Watson arrived he solicited Young's cooperation both in the corridor and later during the meeting in the cafeteria (Tr. 30, 33). Young was given

official permission to remain to see if he could help to pacify the students and maintain order.

The vacillation and indecisiveness of the public officials in *Cox* parallels that in this case. See *Cox, supra,* 13 L. ed. 2d at 497. Clearly, here too there was an indefensible sort of entrapment. Having sought and obtained Young's assistance, they then indicted him under statute because his assistance was not as efficacious as they would have liked.

CONCLUSION

For the foregoing reasons, it is respectfully requested that this Court grant a writ of certiorari to the Supreme Court of New Jersey.

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APPENDIX

APPENDIX

Opinion of the Supreme Court of New Jersey

WEINTRAUB, C.J.

A jury found defendant guilty on an indictment charging that he entered Trenton High School with the intent to disrupt classes therein and otherwise to interfere with the peace and good order of that school. He was fined $500. We certified his appeal before the Appellate Division acted upon it.

The statute, N. J. S. A. 2A:149A-2, reads:

> Any person, other than a bona fide student therein or parent or legal guardian of such student or a teacher, administrator, or other school employee while in the performance of his duties, who enters any building, structure or place used for any educational purpose with the intent of disrupting classes or of otherwise interfering with the peace and good order of the place shall be guilty of a misdemeanor.

Defendant advances several constitutional issues. In one of his points, defendant argues that his entry into the school building was "innocent." We are not sure whether the thrust is only that the State is powerless to punish an "innocent" act notwithstanding the intent or purpose with which the act is done, or whether defendant contends also that there was no evidence that he entered the school with the purpose the statute forbids. We will deem both questions to be before us and deal first with the sufficiency of the proof.

I

Defendant, a lay minister, was the director of the House of Soul, a settlement facility in the City of Trenton. Some of the students of the high school gathered regularly at the House of Soul and defendant was interested in their problems. Defendant conceded he was not within the statutory exclusions, *i.e.,* that he was not a student or a parent or legal guardian of a student or an administrator or other school employee. Defendant said he felt he was a "surrogate father," but of course he does not suggest his deep interest in the students brought him within the statutory exclusion. His interest, however, was pertinent to the factual question whether he entered the school with the hostile intent the statute condemns.

Some background facts are relevant. A student had been suspended from the school for refusing to stand during the flag salute. After consulting the American Civil Liberties Union and being advised the suspension violated the Constitution, defendant dispatched a letter dated March 5, 1969 to the acting principal, with copies to the local newspapers, demanding that the disciplinary action be removed from the school record and that a letter of apology be sent to the student and his parents. The letter closed with this:

> If these demands are not met, I will take appropriate action to organize the high school students to protest the injustice of this action.

On March 11 the high school was picketed by students, and defendant admitted that he planned the picketing and was in the picket line. Late on that day, Dr. Watson, superintendent of the Trenton schools, reached defendant on the phone and told him that the flag-salute incident had been

resolved. Defendant agreed but said there were still other problems, whereupon Dr. Watson invited defendant to a meeting at his office at 8:30 the next morning. Defendant accepted the invitation but he did not keep it. Instead he went to the high school and the indictment arose out of his entrance into that building.

Earlier on March 11 the students planned a sit-in within the school building itself for March 12 and indeed prepared placards at the House of Soul to that end. There was no testimony that defendant knew of those plans prior to the morning of the 12th. Defendant said he then learned from his program director "that the students had planned some type of demonstration at Trenton Central High School that morning" and:

> Q. So what did you do? A. Well, at that particular time I had to make a decision on whether I felt I should be at the high school or whether I should keep my appointment with Dr. Watson. [Dr. Watson's office was not at the high school.]
>
> Q. What was your decision? A. My decision was to go to the high school.

Defendant had his program director advise Dr. Watson that he would not keep the appointment and suggest to Dr. Watson that he meet defendant at the school.

When defendant reached the high school he asked to see Dr. Daniels, the acting principal, and was ushered to his office by a policeman. In defendant's words, "I said to him [Dr. Daniels] that there are a group of students that would like to talk to you about some of their grievances." Dr. Daniels received the students in his office, but the meeting aborted when one of the students led a march out of the office. A substantial number of students were in the corri-

dor. Dr. Daniels tried to have the students enter the auditorium for a grievance session but the students insisted upon the cafeteria. Dr. Daniels acceded to their choice, and a meeting was there held.

The evidence is plain that because of the "sit-in" in the corridor, the scheduled change of classes was prevented and that the existing classes had to be continued to keep the students out of the congested area; that the proceedings in the cafeteria delayed the luncheon for about an hour; that the women employed in the cafeteria were frightened by the commotion to the point where they feared to serve the food, and finally did so only upon the urging and reassurance of the school head.

Defendant's statement of his role was hard to follow. He said he went to the school because he thought he could prevent a demonstration, but the jury could find that on the contrary his purpose was to support the sit-in by his presence, his words, or both, thereby to bring about the very interruptions that occurred. When Dr. Daniels found defendant with a group of the students in the hall after they left his office, Dr. Daniels said to defendant, "You are causing me much trouble now. You are disrupting the school, you should leave," and "You are making the job very difficult for me." Defendant answered, "You didn't have to take this job." Dr. Daniels then handed defendant a copy of the law under which this conviction was had, stating that "You are disrupting this school in violation of this law," to which defendant replied, "Dr. Daniels, don't show me just one law, show me all the laws that pertain to me." Defendant himself testified essentially to the same effect.

Although defendant disavowed a leadership role when asked by Dr. Daniels to intervene to end the sit-in, yet there was testimony that defendant said in the students' presence

that "the students had grievances to be heard and that he wanted to have them heard with the proper authorities" and that "generally what he was saying to the students, that they would remain until they could get a proper hearing with the officials of the school"; that when he was asked to leave, defendant said "He was going to remain and see that the youngsters were given what he thought was a proper education."

Dr. Watson testified that when he talked with defendant on the night of March 11, defendant said he was satisfied with the disposition of the flag-saluting issue, but that defendant "was concerned with some of the other student demands"; that on March 12, following a call from Dr. Daniels, Dr. Watson talked with defendant by phone and asked him why he went to the school rather than to Dr. Watson's office, to which defendant replied, "Well, I have kids here. I am concerned with their problem. I can accomplish far more when I am here with the students than at your office." Dr. Watson testified that when he came to the high school in response to the request of Dr. Daniels, he told defendant that he would be glad to talk with the students, and asked defendant to use his influence with the students to get them into the auditorium, but defendant insisted "I'm not leading the group"; that after the crowd entered the cafeteria, he repeatedly asked defendant to cooperate to end the disorder, but defendant answered that "I am not leading these kids. They have their own concerns. I am just supporting them here. I am not leading them." Dr. Watson said, "I told him three distinct times his behavior was not acceptable and that he should leave the building. I told him I didn't think he was contributing anything to the situation. I thought he should leave the building," but defendant did not leave. Dr. Watson reminded defendant that

Dr. Daniels had shown defendant a copy of the statute here involved whereupon Dr. Watson received the same response, that "Dr. Daniels should have shown me all the laws regarding me." Defendant finally left the building at the request of a State Trooper, and the testimony was that the disorder thereupon ended.

A police officer, who was a member of the Community Relations Unit of the police department and who was on duty at the high school on March 12, testified that defendant became "very loud and boisterous" after reading the copy of the statute handed him by Dr. Daniels; that after saying that "he didn't want to hear some of the laws, he wanted to hear all of the laws," defendant "informed Dr. Daniels that they would stay in the corridors until hell freezes, if necessary"; that when the officer asked defendant to leave the cafeteria "for the good of all those concerned,"

> • • • Mr. Young informed me that he was not going to leave the cafeteria, Mr. Young became very loud, very boisterous, and he again said to me he would remain there, if necessary, until hell freezes over. This is the same statement he made to Dr. Daniels upstairs. He also informed n that he was afraid of 'no damn cops'.

The witness said "there was chaos in the cafeteria"; that defendant, without any apparent invitation, "took the microphone from one of the students who was there and that's when he informed the student body that he was afraid of no damn cops"; that defendant did not try to calm the students, but rather "He infuriated the students, he himself. I don't know what happened to the man that particular day; it really shocked me."

There was further testimony that when defendant finally told the students over the loud speaker system that he was leaving, "he asked them to return with him if they desired to the House of Soul where they could continue their conversations." A defense witness said she was the one who urged the students to follow defendant when he left and that she and some other students did leave with him.

The defense testimony in the main squared with the State's proof, except for defendant's denial that he said he would remain until "hell freezes over" and that he was afraid of "no damn cops." But defendant denied he had a "leadership" role. As to the reason why he went to the school, he said "I had the strong feeling, and maybe I can't articulate the feeling, it was something, a feeling, you know, I had to be there at the school. I had to figure out, you know, I wanted to be there." He added that "I know I had that appointment that morning with Dr. Watson and that appointment was important to me, but I guess the welfare and well-being of those students I had to figure out what was most important to me, and I felt if I were there that morning I could avoid any disruption. I mean that when I am talking disruption of anything happening, anyone being hurt or any violence erupting at that school. That's why I was there." He explained his role in the cafeteria this way:

> Well, at that particular time I was down there and I guess I know sometimes how demonstrations, you know, come off, I felt at that particular time I would have liked to have set the tone for the behavior of people that were attending that meeting, I felt there was an opportunity then to do it. So I went up to the microphone and I requested that anyone that was there who did not have any legitimate grievance or that was there

> to create a problem that I requested that they leave, because I felt there was some students there that had some legitimate gripes and if that kind of behavior, of any kind of disruptive behavior was exhibited it would work to the detriment of the grievances of the students they had there, so if they could not help them I would prefer them to leave.

It of course is not within our province on this review to decide the factual issue of guilt. Rather the question is whether the evidence could fairly support a finding by a jury that guilt was established beyond a reasonable doubt. If the evidence is sufficient to that end, the jury's finding must be respected. We are satisfied the evidence was ample. The issue was whether defendant, when he entered the school building, did so "with the intent of disrupting classes or of otherwise interfering with the peace and good order of the place." On the basis of the circumstances antedating his entry and the facts relating to his behavior after the entry, the jury could reasonably find that defendant came to the school with the intent to support the sit-in and thereby to disrupt classes and to interfere with the peace and good order of the place.

II

[1] Defendant asserts the statute violates the equal protection clause of the Fourteenth Amendment because it excludes from its prohibition "a bona fide student therein or parent or legal guardian of such student or a teacher, administrator, or other school employee while in the performance of his duties."

A

We see no difficulty when the statute is "measured by the traditional test for a denial of equal protection: whether the challenged classification rests on grounds wholly irrelevant to the achievement of a valid state objective." *Turner* v. *Fouche,* 396 U. S. 346, 362, 90 S. Ct. 532, 541, 24 L. Ed. 2d 567, 580 (1970).

The Legislature sought to protect the educational process from disruption of classes or other interference with the peace and good order of a school. To that end, the Legislature decided to prohibit conduct preparatory to such disruption or interference. Accordingly the statute makes it a misdemeanor to enter the school building if the entry is made with the prohibited intent.

The statute being addressed to an act of entry accompanied by the forbidden intent, the Legislature could reasonably decide to exclude from its scope those individuals whose connection with the educational process would readily account for their entry into the school building. A justification for the exception is not hard to find. Since the excepted individuals have an evident reason to enter the school building, it might be difficult to prove satisfactorily that they came there with the forbidden intent. Further, it being to the benefit of the educational process that they come to the school in pursuit of their interests, they should not be dissuaded by the fear that later events may suggest they came for some hostile end. In addition, the Legislature could find those individuals are not the probable source of the evil with which it was concerned. For these reasons, the Legislature could rationally decide the public interest would not be served, and indeed might be disserved, if those persons were brought within the statute.

Accordingly the situation comes readily within the highly discretionary power of the Legislature to deal with an evil by a measured step against it. *David* v. *Vesta Co.*, 45 N. J. 301, 314-315 (1965); *New Jersey Restaurant Ass'n* v. *Holderman*, 24 N. J. 295, 300-302 (1957). As we said in those cases:

> Thus, it is not enough to demonstrate that the legislative objective might be more fully achieved by another, more expansive classification, for the Legislature may recognize degrees of harm and hit the evil where it is most felt. * * * The Legislature may thus limit its action upon a decision to proceed cautiously, step by step, or because of practical exigencies, including administrative convenience and expense, * * * or because of 'some substantial consideration of public policy or convenience or the service of the general welfare.' * * * Hence it may 'stop short of those cases in which the harm to the few concerned is thought less important than the harm to the public that would ensue if the rule laid down were made mathematically exact.'

Especially must this be true with respect to penal legislation. It is not unusual for a criminal measure to be a precise response to a specific situation. It may be that the same evil could be found in other settings but it would hamstring the Legislature to compel it to search everywhere before it acts.

The legislative body is better situated than a court to know whether legislation is needed, and if so, the area within which the evil should be met. It is therefore appropriate that the judiciary, which can rarely have a record adequate for a better evaluation, should defer to the

legislative judgment unless the classification is plainly indefensible. We of course are not speaking of lines drawn on racial, ethnic, national or religious bases, which, being inherently suggestive of the invidious, may *per se* invalidate a classification or at least make the classification "suspect." See *Loving* v. *Virginia,* 388 U. S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967). In the case at hand, nothing of that kind determines who is within or without the class subject to punishment.

B

Defendant says that if the classification may stand under the traditional test we have just applied, still it must fall under decisions of the United States Supreme Court which require that a "compelling state interest" be shown to sustain classifications in certain areas. This controversial concept[1] has been applied to statutes denying the right to vote, *Kramer* v. *Union Free School District No. 15,* 395 U. S. 621, 89 S. Ct. 1886, 23 L. Ed. 2d 583 (1969); *Evans* v. *Cornman,* 398 U. S. 419, 90 S. Ct. 1752, 26 L. Ed. 2d 370 (1970). The same concept was invoked with respect to a residency requirement for welfare benefits, and this upon a finding that the denial of benefits impaired the constitutionally secured right to travel. *Shapiro* v. *Thompson,* 394 U. S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969). We note that in *Dandridge* v. *Williams,* 397 U. S. 471, 90 S. Ct. 1153, 25 L. Ed. 2d 491 (1970), where a statute relating to county welfare benefits fixed a maximum limit without regard to the number of the members of a family, but where,

[1] The concept is controversial because it raises the question whether, when the focus is upon "equal protection," the judiciary will make the kind of value judgments it long ago disavowed as to a substantive "due process" issue. *The Supreme Court, 1968 Term,* 83 Harv. L. Rev. 118-123 (1969-1970).

unlike *Shapiro,* the statute did not draw a line related to migration, *i.e.,* residency, the classification issue was resolved in conventional terms without reference to a "compelling state interest."

We cannot know how expansive the reach of the new concept will be. Suffice it to say that it has been applied to the denial of a right and indeed a right thought to involve a "fundamental interest," *i.e.,* the right to vote and the right to migrate. The statute before us does not deny to some a common right belonging to all. There is no right to enter a school building with the hostile intent the statute forbids.

C

[2] Defendant seeks to find a fatal discrimination in the context of the sundry public activities which a board of education may permit in a school building "when not in use for school purposes." N. J. S. A. 18A:20-34. Defendant suggests, for example, that with respect to a permitted political function in a school building, there is no reason to deal differently with those who attend, on the basis of whether they are or are not within the groups of persons excluded from the statutory penalty. We think it enough to say that the statute does not apply to such meetings. It protects the educational process and does not encompass unrelated activities permitted in a schoolhouse "when not in use for school purposes."

D

[3] We see no substance in defendant's claim that spiritually he had achieved a paternal relation with the students who came to the House of Soul and hence he is denied equal protection because he is not treated as is a parent under the statute.

E

Finally, defendant contends, still under the equal protection heading, that the statute is overly broad. Defendant says there would be no problem if the statute were limited to "trespassers, intruders or outsiders," but since it literally could include a speaker invited to address the student body, there arises a constitutional issue of "overbreadth" because the invited speaker could be timid in his remarks for fear that someone might later infer he entered the building for the purpose the statute forbids. Thus defendant finds an excessive inroad upon the First Amendment right of free speech.

[4] We do not understand defendant to say that it is beyond the police power of the State to protect the educational process from the disruptions the Legislature here sought to prevent. The State of course has that power. See *Tinker* v. *Des Moines Independent Community School District,* 393 U. S. 503, 514, 89 S. Ct. 733, 740, 21 L. Ed. 2d 731, 742 (1969). Nor does defendant say the statute failed adequately to warn him with respect to the conduct for which he was convicted. The statute is adequate in its description of what is forbidden. See *State* v. *Smith,* 46 N. J. 510, 518-519 (1966), cert. denied, 385 U. S. 838, 87 S. Ct. 85, 17 L. Ed. 2d 71 (1966).

Rather defendant seeks to attack the statute, which in terms is not even addressed to the exercise of speech, upon the basis of a hypothetical situation in which someone who entered a school building for a lawful purpose and indeed in response to an official invitation might be restrained in what he says because he fears the purpose with which he entered the school could be misunderstood. In *Scales* v. *United States,* 367 U. S. 203, 229, 81 S. Ct. 1469, 1486, 6

L. Ed. 2d 782, 801 (1961), the Court responded to a like suggestion that the Smith Act "tends to inhibit the exercise of constitutionally protected rights, in that it engenders an unhealthy fear that one may find himself unwittingly embroiled in criminal liability," by saying "the answer surely is that the statute provides that a defendant must be proven to have knowledge of the proscribed advocacy before he may be convicted."

[5] Moreover, defendant does not assert that he was intimidated with respect to his right of free speech. Rather he urges that someone else might be and asks that the statute be condemned in its entirety because of that possibility. As we have said, the statute is not addressed to the exercise of speech. A First Amendment problem could be but incidental under the special facts of a particular case. That possibility is not the kind of threat to the First Amendment freedom which warrants departing from the usual rule that a defendant may not assail a statute, valid as to him, on the ground that it may be applied unconstitutionally to others. *United States* v. *Raines*, 362 U. S. 17, 21-22, 80 S. Ct. 519, 522-523, 4 L. Ed. 2d 524, 529-530 (1960); *State* v. *Moretti*, 52 N. J. 182, 192-193 (1968), cert. denied, 393 U. S. 952, 89 S. Ct. 376, 21 L. Ed. 2d 363 (1968).

III

[6] Defendant next contends that since he was "invited" to enter the school, his conviction for doing so violated the due process clause. He cites *Cox* v. *Louisiana*, 379 U. S. 559, 85 S. Ct. 476, 13 L. Ed. 2d 487 (1965), where demonstrators were convicted for conducting a demonstration at a place approved by the local police authorities. The Court found "sort of entrapment" on the facts before it. 379 U. S. at 571, 85 S. Ct. at 484, 13 L. Ed. 2d at 496.

[7] There is no factual basis for the claim. Defendant was not invited to enter the school. On the contrary, he went there on his own. After he arrived, he was simply escorted to the office of the assistant principal as would be any other visitor to the school. Nor, it need hardly be said, was defendant invited into the school for the purpose of disrupting classes or to interfere with the peace and good order of the place. The offense being the entry with the forbidden purpose, the offense was complete when defendant entered the school. Thus, the later events were of no moment except insofar as they might evidence the intent with which he entered the premises. The offense, if committed, was not undone because the assistant principal did not have defendant ejected at once, or because defendant, being already there, was asked to assist in ending the disturbance.

IV

Next, defendant contends that the act of entering a public school is in itself "blameless" and that it is beyond the power of the State to punish an innocent act merely because of a forbidden purpose. We think the police power of the State is not thus restricted.

It has long been true that guilt may turn upon the intent with which something itself innocent is possessed or done. A kitchen knife may be a weapon and a chisel a burglar tool, depending upon the intent of the holder. Almost a century ago the United States Supreme Court read a federal statute to provide that lawful goods were forfeited instantly upon their lawful movement, if they were moved with the intent to defraud the government of a tax upon them. *United States* v. *One Hundred Barrels of Distilled*

Spirits, 14 Wall. 44, 61, 81 U. S. 44, 61, 20 L. Ed. 815, 818 (1872).

There are a host of statutes, federal and State, which condemn acts, themselves innocent, if done with a forbidden intent. We will summarize them in approximate terms, sufficient for our immediate purpose.

The possession of certain counterfeit obligations is made criminal but only if the obligation is possessed "with intent to defraud." 18 U. S. C. A. § 480. There is nothing necessarily wrong in teaching or demonstrating the use, application or making of a firearm or explosive or incendiary device or a technique capable of causing injury or death, but 18 U. S. C. A. § 231(a)(1) makes it a crime to do so "intending that the same will be unlawfully employed for use in, or in furtherance of, a civil disorder which may in any way or degree obstruct, delay, or adversely affect commerce" or the performance of any federally protected function.

The right to travel in interstate commerce is fundamentally secured, but that movement is made criminal by a number of statutes wholly on the basis of evil intent. Thus it is an offense to travel in interstate or foreign commerce if the intent is to avoid prosecution for a State felony or the giving of testimony in such a prosecution. 18 U. S. C. A. § 1073, and see also § 1074(a). There surely is nothing wrong with transporting a female in interstate or foreign commerce, but that innocuous act is illegal if done with the intent to induce, entice or compel her to engage in sexual misconduct. 18 U. S. C. A. § 2421. We have a State statute which in like fashion condemns the transportation of a female "through or across this State," but again only if the purpose is prostitution. N. J. S. A. 2A:133-12. An-

other statute condemns travel in interstate o foreign commerce or the use of any facility of interstat commerce if the intent is to incite a riot, and although ie statute requires an overt act, the statute does not, in erms, require that the overt act be itself unlawful. 18 U. ; C. A. § 2101 (a)(1). Similarly, the racketeering statute, 3 U. S. C. A. § 1952(a)(3), forbids travel in interstate o foreign commerce or the use of any of its facilities, incl ing the mail, with the intent to promote "any unlawful act ity" specified in the statute if thereafter there is performe a furthering act which act the statute does not in term require to be itself unlawful.

There is a right to use the mails, but not f the purpose is to advance a fraudulent scheme, and the natter mailed need not in itself be calculated to carry out the scheme or be criminal or disclose the fraudulent pur se. 18 U. S. C. A. §1341, note 67. And the use of a fic ious name or address is not itself prohibited but it beco es punishable if the use is to further a fraudulent sch e within the statute just cited, "or any other unlawfu business." 18 U. S. C. A. § 1342.

The right of association is highly rega d and even a membership in an organization which ad ed and even a cates the overthrow of government by force or violence s not punished, but such membership may be criminal if here is knowledge of that aim and an intent to bri it about. 18 U. S. C. A. § 2385; see *Scales* v. *United S tes, supra,* 367 U. S. 203, 81 S. Ct. 1469, 6 L. Ed. 2d 782.

There is nothing inherently unlawful a out entering a train, but that act is made criminal if th purpose is "to commit any crime or offense against per on or property thereon." 18 U. S. C. A. § 1991. So, too, t is not unlaw-

ful to go upon "any military, naval, or Coast Guard reservation, post, fort, arsenal, yard, station, or installation," but it is a crime to do so "for any purpose prohibited by law or lawful regulation." 18 U. S. C. A. § 1382. Again, it is not a crime to enter a vessel, but it is a crime to enter "with intent to commit any felony." 18 U. S. C. A. § 2276.

We have already referred to N. J. S. A. 2A:133-12 which makes the transportation of a female a crime if the act of transportation is for the purpose of prostitution. We refer to still other statutes of our State, which, like the federal statutes just cited, turn penal liability upon an act itself innocent if done with an intent to achieve some evil end.

It is not inherently wrong to enter a "building, structure, room, ship, vessel, car, vehicle or airplane" but it is a high misdemeanor to enter "with intent to kill, kidnap, rob, steal, commit rape, mayhem or battery." N. J. S. A. 2A:94-1. It is a high misdemeanor to enter any building, structure, or place used for any educational purpose "with the intent of committing therein any indictable offense." N. J. S. A. 2A:149A-1. A gift may be a bribe, depending upon intent. N. J. S. A. 2A:93-7 and 10. It is a crime to burn a cross or religious symbol but only "with intent to intimidate any person or group of persons because of his or their race, color, creed or religion." N. J. S. A. 2A:122-12.

There are a number of statutes which make possession criminal if there is an intent to do some hostile act. See N. J. S. A. 2A:94-3 relating to possession of burglar tools; and see N. J. S. A. 2A:109-2 subds. a and b, relating to possession of counterfeits. As to weapons and explosives, see N. J. S. A. 2A:151-56, 59, and 60. It is a disorderly persons offense to possess certain implements if the intent is to break and enter, or to have on one's person an offensive

or dangerous weapon with intent to assault another, or to be in any place of public resort or assemblage for business, travel, worship, amusement or other lawful place, with intent to steal. N. J. S. A. 2A:170-3.

We refer to this array of statutes solely to evidence the widely held legislative view that such measures are within the legislative power, and to reveal the impact upon public safety and order if it should be held that government, in seeking to anticipate and prevent criminal events, may punish only if a step taken in pursuit of a criminal objective itself bespeaks criminality.

The common law concept of crime called for both an act and a wrongful intent. Intent alone would not suffice; the right, or more accurately the power, to think evil was absolute. Nor was innocuous conduct punished. But in combination, an evil purpose and an innocuous step could be explosive. And as between the two, the evil purpose is the more dangerous for it harbors the ultimate threat. For that reason, it ultimately evolved at common law that an "attempt" to commit a crime was itself punishable as a crime. The evil purpose being shown, the common law punished an act in pursuit of the purpose even though the act fell short of actual harm or injury. Nor need the act in isolation bespeak criminality. "Hence the assertion that 'an act which is in itself and on the face of it innocent, is not a criminal attempt' is untenable. It has long been held that an act might be quite innocent in itself, but found to express a criminal intention on knowledge of surrounding circumstances." Hall, "Criminal Attempt—A Study of the Foundations of Criminal Liability," 49 Yale L. J. 789, 825 (1940).

Generally a line is sought to be drawn between an "attempt" and mere "preparation," preparation itself not being punishable as an attempt. Nonetheless some conduct short of an attempt was punishable at common law. So a solicitation to commit a crime, though not equaling an attempt, was dealt with as a crime. The most conspicuous proscription of the common law in anticipation of actual injury or an attempt thereat was the crime of conspiracy, for that crime required no more than an agreement for an unlawful end. The conspiracy was itself punished, realistically, not because the act of agreeing to seek an unlawful end was itself hurtful, but rather because the combination of the wills of several was "much more likely to result in evil consequences than the mere intent of only one person." 3 *Burdick, Law of Crime* (1946) § 984, p. 435. And, of course, when a conspiracy statute requires an overt act, the act need not itself be an act of criminality. *Scales* v. *United States, supra,* 367 U. S. at 225, 81 S. Ct. at 1484, 6 L. Ed. 2d at 799.

To meet the added dangers of a complex and congested society, legislatures have gone beyond the common law in punishing conduct which by common law standards might fall short of an attempt. Professor Perkins observes that "it is becoming increasingly common for legislative enactment to provide a penalty (often a severe one) for what the common law regarded as an unpunishable act of preparation." Perkins, *Criminal Law* (1957), p. 486. We are told that "The rule relating to acts of preparation has been abandoned in some states by statute under which any act done as a step in the commission of the intended offense is made an attempt." 1 *Wharton's Criminal Law and Procedure* (Anderson 1957), § 75, p. 161. We must note, how-

ever, that the statutes cited by *Wharton* seem not to be read as broadly as his text would suggest. See *Butts* v. *State,* 46 Ga. App. 174, 167 S. E. 209 (Ct. App. 1932); *Hammond* v. *State,* 47 Ga. App. 795, 171 S. E. 559 (Ct. App. 1933); *State* v. *Denney,* 69 Wash. 2d 436, 418 P. 2d 468 (Sup. Ct. 1966); *State* v. *Lewis,* 69 Wash. 2d 120, 417 P. 2d 618 (Sup. Ct. 1966). But the many statutes we recounted above have the common feature of punishing an act only because of the evil purpose it pursues, without regard to whether the act would constitute an attempt to commit the offense the statutes seek to head off, and even though the act, absent such purpose, may be one protected by the Constitution.

We see no serious challenge to the power of a legislature to make it an offense to take a step, otherwise lawful, in furtherance of a hostile end. The issue was raised in *State* v. *Dietrich,* 117 Kan. 105, 230 P. 329 (Sup. Ct. 1924). The statute there made it a crime to enter a bank with the intent to rob. The court rejected the substantive due process attack quite summarily. We think that *Scales* v. *United States, supra,* 367 U. S. 203, 81 S. Ct. 1469, 6 L. Ed. 2d 782, supports the legislative power.[2] See also *Lupino* v. *United*

[2] The case involved the Smith Act, 18 U. S. C. A. § 2385, which denounces membership in an organization that advocates the overthrow of government by force or violence. In rejecting a substantive due process challenge to the statute, the Court said (367 U. S. at 225-226, 81 S. Ct. at 1484, 6 L. Ed. 2d at 799-800):

Any thought that due process puts beyond the reach of the criminal law all individual associational relationships, unless accompanied by the commission of specific acts of criminality, is dispelled by familiar concepts of the law of conspiracy and complicity. While both are commonplace in the landscape of the criminal law, they are not natural features. Rather they are particular legal concepts manifesting the more general principle that society, having the power to punish dangerous behavior, cannot be powerless against those who work to bring about that behavior. The fact that

States, 268 F. 2d 799, 802 (8 Cir. 1959), cert. denied, 361 U. S. 834, 80 S. Ct. 86, 4 L. Ed. 2d 75 (1959); *United States* v. *Lawson,* 255 F. Supp. 261, 266-267 (D. Minn. 1966); *Martin* v. *State,* 245 Ind. 224, 194 N. E. 2d 721, 726 (Sup. Ct. 1963); *Lambert* v. *State,* 374 P. 2d 783 (Okl. Ct. Cr. App. 1962); cf. *Adderley* v. *Florida,* 385 U. S. 39, 42-43, 87 S. Ct. 242, 244-245, 17 L. Ed. 2d 149, 153 (1966); but cf. *Bolin* v. *State,* 266 Ala. 256, 96 So. 2d 582 (Sup. Ct. 1957).

We assumed such statutes were within the police power when we decided *State* v. *Zito,* 54 N. J. 206 (1969). We there dealt with N. J. S. A. 2A:170-1,[3] a petty offense statute, and endeavored to strip it of language which might render it invalid. We said, 54 N. J. at 215:

> A statute such as ours seeks to head off the commission of crime. It reaches a criminal plan not yet pressed to the stage of an 'attempt.' Where several agree to commit a crime, as appears to be the case before us, the conspiracy statute may be invoked even though a substantive offense is not yet attempted, but when only one individual is involved, there must be another way to deal with the same threat. This is

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Congress has not resorted to either of these familiar concepts means only that the enquiry here must direct itself to an analysis of the relationship between the fact of membership and the underlying substantive illegal conduct, in order to determine whether that relationship is indeed too tenuous to permit its use as the basis of criminal liability. * * *

[3] N. J. S. A. 2A:170-1 provided:

Any person who is apprehended and cannot give a good account of himself, or who is engaged in an illegal occupation and who is in this state for an unlawful purpose, is a disorderly person. In any prosecution under this section the fact that the person apprehended cannot give a good account of himself or is engaged in an illegal occupation is prima facie evidence that he is present in this state for an unlawful purpose.

the aim of the statute, and it applies whether there are one or more. It of course does not penalize mere thought. Indeed it does not penalize acts of preparation as such, for it requires presence at a place for an unlawful purpose. Thus the Legislature denounced (1) the act of going to a place and remaining there, (2) with intent to commit an unlawful act.

We see no reason why the State may not deal penally with such an act done with that intent. Cf. *Dominquez* v. *City and County of Denver,* 147 Colo. 233, 363 P. 2d 661 (Sup. Ct. 1961); *City of Portland* v. *Goodwin,* 187 Or. 409, 210 P. 2d 577 (Sup. Ct. 1949); *City of Seattle* v. *Drew,* 70 Wash. 2d 405, 423 P. 2d 522 (Sup. Ct. 1967). Nor do we find obscurity in the words 'unlawful purpose.' An 'unlawful purpose,' as the sense of the situation suggests, is a purpose to do an act which the Legislature has forbidden upon pain of conviction for crime or petty offense. * * *

Shortly after *Zito,* a three-man court held unconstitutional the same statute we there sustained. *Karp* v. *Collins,* 310 F. Supp. 627 (D. N. J. 1970). Accepting our construction of the statute, *Winters* v. *New York,* 333 U. S. 507, 514-515, 68 S. Ct. 665, 669-670, 92 L. Ed. 840, 849 (1948), the Court in *Karp* held the statute to be void for "vagueness" (310 F. Supp. pp. 632-635). We see nothing vague about the statute as we interpreted it. There is nothing vague about the description of the evil purpose, for the reference is to existing penal statutes which must themselves pass muster on that score. Were it otherwise, the many statutes which refer to or incorporate the general body of criminal statutes would fall. We mention, for example, our statutes dealing with attempts, N. J. S. A. 2A:85-5, aiding and

abetting, N. J. S. A. 2A:85-14, compounding, N. J. S. A. 2A:97-1, concealment of crimes, N. J. S. A. 2A:97-2, and conspiracy, N. J. S. A. 2A:98-1. See also the many federal and State statutes we recounted above, and to them may be added 18 U. S. C. A. § 13, which makes applicable to a federal enclave all of the penal laws of the State, territory, or district within which the enclave is situated. See *United States* v. *Sharpnack,* 355 U. S. 286, 78 S. Ct. 291, 2 L. Ed. 2d 282 (1958).

Far more troublesome in this regard is the civil rights statute, 18 U. S. C. A. § 242, which punishes a person who under color of law deprives an inhabitant of any right, privilege or immunity secured by the Constitution or the laws of the United States. In the attack upon that statute for vagueness, it was stressed that there was no ready source to which one might go for a specification of those guaranteed rights, but the Court upheld the statute, the plurality opinion stressing that "a specific intent to do a prohibited act may avoid those consequences to the accused which may otherwise render a vague or indefinite statute invalid." *Screws* v. *United States,* 325 U. S. 91, 101, 65 S. Ct. 1031, 1035, 89 L. Ed. 1495, 1502-1503 (1945). See also, *United States* v. *National Dairy Products Corp.,* 372 U. S. 29, 35, 83 S. Ct. 594, 599, 9 L. Ed. 2d 561, 567 (1963).

Nor does the statute involved in *Zito* become "vague" because, as *Karp* suggests, conceptually it may be impossible to go to a place to commit some violations of our penal laws. A statute prohibiting attempts does not fall for vagueness because one may have difficulty conceiving of an attempt to commit involuntary manslaughter, or nonfeasance in office, or nonsupport of one's wife or child, or perjury by a witness, or an official crime by one who does not hold office, or where it is "impossible" to complete the

intended crime, see *State* v. *Moretti, supra,* 52 N. J. at 188-189. Such uncertainties do not render a statute void for vagueness at the suit of one whose conduct is clearly covered. The situation falls within the traditional rule that a statute will not be stricken on the basis of hypothetical or uncertain applications of it, *United States* v. *Raines, supra,* 362 U. S. at 21-22, 80 S. Ct. at 522-523, 4 L. Ed. 2d at 529-530, rather than within the exceptional proposition that a statute may be enjoined in its entirety where freedom of the speech or press is the actual subject of the statute and the exercise of that freedom is manifestly hindered by the very vagueness of the prohibiting act. *Dombrowski* v. *Pfister,* 380 U. S. 479, 85 S. Ct. 1116, 14 L. Ed. 2d 22 (1965); *Cameron* v. *Johnson,* 390 U. S. 611, 88 S. Ct. 1335, 20 L. Ed. 2d 182 (1968).

Nor is the description of the forbidden act in *Zito* at all vague. It is most precise. It consists of going to a place and remaining there in pursuit of the evil objective. It is far more precise than the description of acts required for an attempt, which, as every treatment of the subject notes, is heavily laden with ambiguities involving proximity and the like. Vagueness is not demonstrated by saying, as *Karp* did, that "But going to a place with the intent to commit a crime or petty offense amounts to no more than presence at the place wherein a criminal purpose is entertained with the added element only that the purpose has been formed elsewhere." 310 F. Supp. at 633. The same comment could be equally made with respect to the statutes we have already cited involving travel in interstate commerce with the intent to do a forbidden act which the statute does not specify as to time or place. See, for example, 18 U. S. C. A. § 2421 (the white slave statute) and 18 U. S. C. A. § 2101 (a)(1) (travel in interstate commerce with the intent to

incite a riot), and 18 U. S. C. A. § 1952(a)(3) (racketeering statute). The same comment could of course be made with respect to statutes involving an entry, otherwise lawful, into an area or place with intent to commit an offense therein, of which 18 U. S. C. A. § 1382, which deals with going upon a military reservation "for any purpose prohibited by law or lawful regulation," is particularly notable because of the vastness of the place, the range of the offenses, and the absence of any stipulation as to proximity in time or place.

Karp speaks only of vagueness. It does not say the statute sustained in *Zito* is beyond the police power of the State, *i.e.*, that travel to a place in furtherance of a forbidden purpose is too remote a threat to support the exercise of that power. And, on the subject of due process, we add that the statute, as construed in *Zito*, does not relieve the State of the burden of proving the evil purpose by permitting the innocent act to be proof of that purpose. We were careful in *Zito* to stress the State's burden to prove each constituent element of the offense, and expressly held that a failure or refusal of the accused to give a good account of his presence could not be deemed to show the evil intent. 54 N. J. at 214, 215-220.

In any event, the statute now before us could not be called "vague" even under the conception of vagueness embraced by *Karp*. And with respect to the reach of the police power, we do not doubt the power of the Legislature to deal with the stated threat to the educational process by punishing the act of entry if done with the hostile purpose the statute denounces. Whether the evil warrants criminal proscription and whether the statutory thesis is appropriate to that end are questions committed primarily to legislative judgment. We surely cannot claim to be better informed

upon either facet and hence cannot say the legislative judgment is arbitrary.

We appreciate, of course, that all of the statutes we have cited which condemn an act, otherwise innocent, because of a forbidden intent, could be misused. But courts exist to see that they are not, and the Constitution must be read with the confidence that the judicial process will be equal to its fact-finding responsibility.

The final point made is that under the charge and supplemental charge to the jury, a verdict of guilty could have been returned on a finding that the prohibited intent arose after defendant's entry into the building. No such objection was made at the trial. We think the instructions, considered as a whole as they must be, clearly told the jury it must find that defendant entered the building with the forbidden intent.

The judgment is affirmed.

For affirmance—Chief Justice WEINTRAUB and Justices JACOBS, FRANCIS, PROCTOR, HALL, SCHETTINO and HANEMAN—7.

For reversal—None.

SUPREME COURT, U. S.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1444

JOHN YOUNG,

Petitioner,

vs.

STATE OF NEW JERSEY,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

BRIEF FOR RESPONDENT IN OPPOSITION

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BRIEF FOR RESPONDENT IN OPPOSITION

Opinion Below

The opinion of the Supreme Court of New Jersey (App. A of Petition) is reported at 57 N. J. 240 (1970).

Jurisdiction

The jurisdictional requisites are adequately set forth in the Petition.

Statute Involved

The provisions of N.J.S. 2A:149A-2 are set forth in the Petition at page 3.

Statement

The Petitioner, John Young, was charged and convicted of entering Trenton Central High School on March 12, 1969 in violation of N.J.S. 2A:149A-2, the so-called School Intruder Act. Petitioner Young was a lay minister with the Unitarian Universalist Association although he has had no formal educational background to prepare him for such work (R285-1 to 37). On the day prior to the incident John Young planned and took part in picketing of the Trenton High School over a dispute relating to the refusal of certain students to salute the United States flag (R247-20 to 21; 181-5 to 7). That night, in a racially tense atmosphere, Dr. Ercell Watson, Superintendent of the Trenton school system, arranged to meet with John Young at Dr. Watson's office which was located some distance from the high school (R251-17 to 18). Instead, John Young went directly to Trenton Central High School on the morning of March 12, 1969 (R17-6 to 11; 252-12 to 15). At a meeting held the previous night at the House of Soul a sit-in had been planned for the high school on that morning (R183-16 to 20; 198-23 to 25; 199-1; 230-22 to 26).

At the time that John Young chose to go to Trenton Central the flag dispute had been resolved and Young

was so notified (R15). Notwithstanding the resolution, Petitioner Young requested a meeting with the principal of the high school, Dr. Daniels. Dr. Daniels received Mr. Young and a number of students in his office but the meeting was aborted when some of the students felt that they were not being heard (R44; 56-1 to 12; 224; 258; 259).

As the meeting in Dr. Daniel's office was ending, Dr. Daniels requested John Young to leave the high school saying, "Rev. Young, you are causing me much trouble now, you are disrupting the school, you should leave . . . you are making the job very difficult for me. It is a difficult job as it is." John Young then replied, "You didn't have to take this job." (R45). Dr. Daniels then presented to John Young a copy of the School Intruder Law, stating to him, "You are disrupting the school in violation of this law." John Young then repied, "Dr. Daniels, don't show me just one law, show me all the laws that pertain to me." (R46). Dr. Daniels also requested that John Young leave the high school after showing him the copy of the law. John Young refused to heed either of these requests (T48-15 to 21).

Dr. Daniels suggested a meeting in the school auditorium but this was refused (R31-16 to 19). It was then agreed to hold the meeting in the cafeteria. In the cafeteria, Dr. Watson, who had subsequently arrived at the school, also asked John Young to leave the building saying, "I told him three distinct times his behavior was not acceptable and that he should leave the building. I told him I didn't think he was contributing anything to the situation. I thought he should leave the building . . . he did not leave the building at my request." (R26-12 to 19) Asked on recross-examination why he, Dr. Watson, asked John Young to leave the building, Dr. Watson replied,

"Because I thought his presence there, his very presence led to the disruption of the high school." (R37-15 to 17)

Detective Quintillious Smith related some of the conduct of John Young during the day of March 12, 1969. Detective Smith testified that John Young became very loud and boisterous after Dr. Daniels read him the School Intruder Law (R70-17 to 19). Detective Smith also heard John Young state that he "would stay in the corridors until hell freezes over, if necessary." (R71-1 to 3). Detective Smith then approached John Young in the cafeteria and asked him to leave, whereupon John Young replied, according to the testimony of Detective Smith, that "he was not going to leave the cafeteria; Mr. Young became very loud, very boisterous, and he again said to me that he would remain there, if necessary, until hell freezes over . . . He also informed me that he was afraid of 'no damn cops.'" (R71; 72-2 to 8) This statement to the effect that he, John Young, was afraid of "no damn cops" was made to the entire student body present in the cafeteria at that time (R81, 82). Detective Smith further stated that John Young "infuriated the students, he himself. I don't know what happened to the man that particular day; it really shocked me." (R80-3 to 5)

The evidence clearly indicates that a general disruption occurred requiring a change of scheduled classes and a delay of the lunch period.

ARGUMENT

1. Petitioner suggests that the so-called "compelling state interest test" should be applied to the facts herein. The "compelling state interest test" is of fairly recent origin and has been used to determine cases involving the right to vote and the right to migrate. See *Kramer*

v. *Union Free School District #15,* 395 U. S. 621 (1969); *Evans* v. *Cornman,* 398 U. S. 419 (1970); *Shapiro* v. *Thompson,* 394 U. S. 618 (1969). The Supreme Court of New Jersey decided the matter below with reference to the *Kramer, Shapiro* and *Evans* decisions and found that the very test suggested when applied to the statute herein considered did not deny a common right held by all but merely proscribed that a specific act coupled with a hostile intent would come within the forbidden classification.

Clearly no one is denied access to the schools of New Jersey even under the most literal interpretation of the statute. However, to elevate the right to enter schools with the basic constitutional guarantees of voting and travel would eliminate that administrative control necessary to prevent agitators from disrupting the education processes. Accordingly, the decision below is most appropriate and correct and further examination by this Court, it is submitted, is unnecessary.

2. Petitioner next seeks refuge in claiming a denial of equal protection, presumably of the 14th Amendment to the Constitution, suggesting that the list of exceptions to the statute, i.e., students, teachers, employees and parents or guardians of attending students is "patently arbitrary and capricious without any conceivable basis in fact." (Petition, p. 14) The New Jersey Supreme Court found that the intent of the statute was to protect the educational processes from disruption and interference (57 N. J. 249). It further found that those persons excluded from the scope of the statute were ones easily viewed to be connected with the normal educational procedures carried out in the school suggesting that the Legislature therefore could properly find the individuals so excepted not to be the probable source of the evil with which it [the Legislature] was concerned." (57 N. J. 249)

In citing *Turner* v. *Fouche,* 396 U. S. 346 at 362 (1970) the court below considered the traditional test for the denial of Due Process as set forth therein, i.e. "whether the challenged classification rests on grounds wholly irrelevant for the achievement of a valid state objective", and held quite correctly that the Legislature appropriately determined the classifications complained of to be constitutionally proper.

3. Petitioner next suggests that the New Jersey statute in question is "vague" in light of *Karp* v. *Collins,* 310 F. Supp. 627, District of New Jersey (1970), which court had occasion to consider another New Jersey statute, N.J.S. 2A:170-1. However, this Court in *Younger* v. *Harris,* 400 U. S. ——, 91 S. Ct. 746 (1971) devitalized the District Court holding in *Karp.* Accordingly, there exists no important question of federal law and references and comparisons to the *Karp* decision and its progeny are therefore unavailing to Petitioner.

Moreover, the New Jersey Supreme Court in considering the proposition without the benefit of the *Younger* holding found no difficulty in applying N.J.S. 2A:149A-2 to a factual pattern where an individual, such as Petitioner herein, combines an otherwise lawful activity with a proscribed hostile intent. Even the suggested infirmities found by the three judge district court in the pre-*Younger-Karp* decision could not validly sustain a holding of unconstitutionality with respect to the statute herein considered. The excellent analysis of the New Jersey Supreme Court cited at 55 N. J. 255 to 264 strongly compels a finding of constitutional validity relating to any proposition suggesting vagueness.

4. The claim of petitioner that the statute in question results in a "chilling effect" on the exercise of First

Amendment rights is effectively laid to rest in *Younger* v. *Harris, supra,* in that opinion this Court commented extensively on the problems raised by a supposed "chilling effect" as well as the applicability of *Dombroski* v. *Pfister,* 380 U. S. 479 (1965) to circumstances parallel to those extant herein. To suggest, as Petitioner does, that educational institutions would ". . . hesitate to invite any speaker with a viewpoint to address the students or to permit any public forums to be held on the school premises." (Petition, p. 17) because of the decision below not only flies in the face of the decisions of this Court but invests Petitioner's arguments with more rhetoric than reason.

5. Petitioner's claim of "entrapment" in violation of the Due Process Clause of the Constitution as interpreted by *Cox* v. *Louisiana,* 379 U. S. 559 (1965) is as strained in concept as it is in fact. This Court in *Cox* did indeed suggest a "sort of entrapment" in the activities of the police. However, to put the instant matter in proper perspective it should be noted that there is no suggestion by the Petitioner that he was invited into the school for purposes forbidden by the questioned statute, i.e. ". . . with the intent of disrupting classes or of otherwise interfering with the peace and good order of the place . . .", such intendment being the *sine qua non* of entrapment.

Moreover, accepting no more than petitioner's rendition of the facts at face value, the activities of the school authorities fall far short of an "entrapment" such as that obliquely alluded to in *Cox.* Accordingly, it is submitted that the question presented by petitioner's Point 5 is too insignificant to be considered by this Court.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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